

Documents

for

FOIA request

#EPA-R6-2014-007649



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

DEC 30 1997

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (P 004 773 057)

Honorable Carlos Ramirez
Mayor of El Paso
2 Civil Center Plaza
El Paso, TX 79901

Re: Administrative Order Docket No. VI-98-1027
NPDES Permit No. TXR05B556

Dear Mayor Ramirez:

Recent review of your National Pollutant Discharge Elimination System (NPDES) file indicates that your facility is not in compliance with your NPDES permit and the Clean Water Act (CWA). In order to ensure continued protection of public health and the environment, the Environmental Protection Agency (EPA) must take necessary steps to ensure compliance with applicable regulations and statutes.

Pursuant to the CWA (33 U.S.C. § 1251 et seq.), the enclosed Administrative Order (AO) sets forth the findings of fact and how you violated the Act. The Order also provides a mechanism for resolving these violations. All responses and reports required by the Order should be submitted within the time frames provided. In all responses, please reference AO Docket No. VI-98-1027 and your NPDES permit number, and send correspondence to the attention of Mr. Taylor Sharpe (6EN-WT).

The violations cited in the attached Order should be corrected within a reasonable time period. Our staff will assist you in any way possible to ensure that your facility returns to compliance.

As part of the enforcement process, EPA is authorized to require corrective action and, possibly, assess appropriate penalties. If penalties are assessed, the Agency will consider a number of factors, including the nature and magnitude of the violations, the period of noncompliance and the impact of the violations on human health, or the environment. By statute, the penalties assessed can be as much as \$27,500 per day. In order to avoid any such action, or to minimize the amount of penalties you may be assessed if further action is warranted, noncompliance should be corrected as soon as possible.

Your cooperation and prompt attention will be appreciated.
If you have any questions, please contact Mr. Sharpe, EPA,
Dallas, Texas at (214) 665-7112.

Sincerely yours,

/s/ BG

Samuel Coleman, P.E.
Director
Compliance Assurance and
Enforcement Division (6EN)

Enclosure

cc: Ms. Wendy Rozacky
Section Chief, Enforcement
Watershed Management Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711

bcc: Black (6XA)
Whitten-Hill (6EN-WC)
Pesina (6EN-L)
R. File (6EN-W)
Gigger (6EN-ASH) TX ONLY

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	
	§	CWA Docket No. VI-98-1027
The CITY OF EL PASO, TEXAS	§	
acting as the	§	
EL PASO INTERNATIONAL AIRPORT,	§	
	§	FINDINGS OF VIOLATION
Respondent.	§	AND
	§	ORDER FOR COMPLIANCE
NPDES Permit No. TXR05B556	§	

STATUTORY AUTHORITY

The following FINDINGS are made and ORDER issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by § 309(a) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(a). The Administrator of EPA has delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. El Paso International Airport is wholly owned and operated on behalf of the local public by the City of El Paso,

Texas, a municipality operating through its Mayor, Carlos Ramirez, and City Counsel (herein collectively "Respondent"). Respondent's mailing address is 2 Civil Center Plaza, El Paso, Texas, 79901

2. As a "municipality", Respondent is a "person," within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

3. At all times relevant to this Order, the Respondent owned and operated an airport known as the El Paso International Airport, located at 6701 Convair Road, El Paso, Texas 79925-1091 (herein "the facility").

4. At all times relevant to this Order, the facility was a "point source" of a "discharge" of "pollutants" in and with its storm water discharges to Airport Retention Basins, which are "water[s] of the United States" within the meaning of § 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2. As a result, the Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under § 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States except with the authorization of, and in compliance with, a NPDES permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to such specific terms and conditions as are prescribed in the applicable permit.

7. Pursuant to Section 402(a) of the Act, EPA issued the NPDES Storm Water Multi-Sector General Permit for Industrial Activities (60 Fed. Reg. 50804, September 29, 1995), (herein "the permit"). It is the permit available to Respondent to obtain coverage for the cited operations, and authorizes discharges of pollutants with storm water associated with industrial activity from point sources (including discharges to or through a municipal separate storm sewer systems) to waters of the United States, in accordance with the conditions of the permit.

8. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under § 402(a) of the Act, 33 U.S.C. § 1342(a).

9. Under 40 C.F.R. § 122.26(b)(14), the following categories of facilities are among those considered to be engaging in "industrial activity" for purposes of § 402(p) of the Act and 40 C.F.R. §§ 122.1 and 122.26:

... (viii) Transportation facilities classified by the SIC codes listed below which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under categories (i)-(vii) or (ix)-(xi) are associated with industrial activity, and need permit coverage.

SIC Codes included:

- 40 railroad transportation
- 41 local and interurban passenger transit
- 42 trucking & warehousing (except 4221-25, see (xi))
- 43 US postal service
- 44 water transportation
- 45 **transportation by air**
- 5171 petroleum bulk stations and terminals

10. At all times relevant to this Order, Respondent owned or operated an airport classified under Standard Industrial Classification (SIC) Code number 4581, a subcategory of SIC Code classification series 45, "transportation by air" (Revised 1987 edition by the Executive Office of the President, Office of Management and Budget), and as such is "industrial activity" within the meaning of § 402(p) of the Act, and 40 C.F.R. §§ 122.1 and 122.26(b)(14).

11. The operations at the facility are industrial activity subject to permitting, and Respondent was required to make application for and obtain NPDES permit coverage under the permit described above for its activities at the facility.

12. At all times relevant to this action, Respondent was an "owner" or "operator" within the meaning of 40 C.F.R. § 122.2 and the permit, and was therefore required to obtain NPDES permit coverage for its industrial activities at the facility.

13. Phase I of the storm water regulations states that "industrial activities" as defined by 40 C.F.R. § 122.26(b)(14) were not required to obtain NPDES permit coverage before October 1, 1992 [40 C.F.R. § 122.26(a)]. Respondent applied for and was issued NPDES permit coverage under the permit described above, and was assigned NPDES Permit No. TXR05B556. Respondent was authorized to discharge pollutants to waters of the United States, in compliance with the specific terms and conditions of the permit, effective on March 30, 1996.

14. Between October 1, 1992 and March 30, 1996, Respondent operated the industrial activity represented by the airport without the authorization of a NPDES permit.

15. On May 30, 1997, the facility was inspected by EPA Region 6. As a result of this inspection and an ongoing investigation, the facility had not developed and implemented a Storm Water Pollution Prevention Plan (SWPPP) according to the terms of the permit. Additional findings from the investigation concluded that, other than the Respondent, none of the 259 tenants of the facility reviewed had NPDES permit coverage at the

time of the inspection, and that there was a lack of knowledge among facility personnel and tenants on storm water compliance. Respondent met with EPA December 16, 1997 to inform EPA that a SWPPP was being prepared by their consultant, Woodward-Clyde, and that Respondent would be working with the approximately thirty (30) tenants that are "Industrial Activities" to prepare a comprehensive SWPPP.

16. Part IV of the permit relates to Storm Water Pollution Prevention Plans:

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices and in accordance with the factors outlined in 40 CFR 125.3(d)(2) or (3) as appropriate. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance:

1. Existing Facilities. Except as provided in paragraphs 3., 4., and 5. (below), all existing facilities and new facilities that begin operation on or before [June 25, 1996] shall prepare and implement the plan by [September 25, 1996].

17. Failure to have a storm water pollution prevention plan that is developed and implemented based on good engineering practices and in accordance with the factors outlined in 40 C.F.R. § 125.3(d)(2) or (3) is a violation of Part IV of the permit.

18. Failure to have a storm water pollution prevention plan completed and implemented by September 25, 1996 is a violation of Part IV.A.1. of the permit.

19. Each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

ORDER

Based on these Findings and pursuant to the authority of §§ 308(a) and 309(a) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a), EPA HEREBY ORDERS the Respondent to take the following action:

A. Within 30 days of the effective date of this Order, the Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of the permit.

B. Within 30 days of the effective date of this Order, the Respondent shall submit a written report detailing the specific

actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

C. In the event that the Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations within the shortest possible time. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

E. In order to Show Cause why Respondent has not complied with the Act and its regulations, and why EPA should not take further enforcement action against Respondent for the violations cited, Respondent shall arrange a meeting with EPA within forty-five (45) days of the effective date of this Order, to be held at the Region 6 offices, 1445 Ross Ave., 7th Floor, Dallas, Texas. Respondent shall provide to EPA all information or materials it considers relevant at the meeting.

F. To arrange the Show Cause meeting, or to ask questions or comment on this matter, please contact Mr. Taylor Sharpe of our office at (214) 665-7112.

G. Any information or correspondence submitted by the Respondent to EPA under this Order shall be addressed to the following:

Mr. Taylor Sharpe
Water Enforcement Branch (6EN-WT)
EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, Texas 75202-2733

GENERAL PROVISIONS

Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.

Failure to comply with this Order or the Act can result in issuance of an administrative complaint, or a civil judicial action initiated by the U.S. Department of Justice. If EPA initiates such an action, Respondent will be subject to civil penalties of up to \$27,500 per day of violation.¹

¹ The civil penalty amounts that can be assessed under Section 309 of the Clean Water Act were amended to increase by 10% by the Civil Monetary Penalty Inflation Adjustment Rule (61 Fed. Reg. 69359, December 31, 1996, as corrected in 62 Fed. Reg. 13514, March 20, 1997), effective June 1, 1997, under the Debt Collections Improvement Act of 1996, 31 U.S.C. § 3701 et seq.

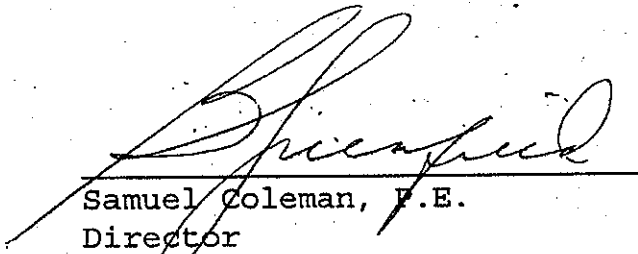
If a criminal judicial action is initiated by the U.S. Department of Justice, and Respondent is convicted of a criminal offense under § 309(c) of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under § 508 of the Act.

This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

The effective date of this Order is the date it is received by the Respondent.

DEC 30 1997

Date



Samuel Coleman, P.E.
Director
Compliance Assurance and
Enforcement Division